

THE MONTHLY PUBLIC POLICY UPDATE SEPTEMBER 2021

Black Box Intelligence™, in conjunction with Align Public Strategies, compiled a summary of key legislative, regulatory and political issues over the last month that are important for human resource leaders to know. If you have any questions regarding a particular item or issue, please feel free to call Joe Kefauver, Managing Partner of Align Public Strategies at 407-425-0300 or email him at joe.kefauver@alignpublicstrategies.com

COVID-19

OSHA: This week President Biden announced a six-point plan to combat the spread of the COVID-19 virus. Most pertinent to the employer community is a new Occupational Safety & Health (OSHA) mandate that large employers (defined as 100 workers or more) ensure their workers are vaccinated, or they submit to weekly testing. **PENDING**

EIDL PROGRAM: The Small Business Administration (SBA) this week increased the maximum amount of funding a small business can borrow through the Economic Injury Disaster Loan (EIDL) program. The increase from \$500,000 to \$2 million can be used to hire and retain employees, purchase inventory/equipment, and pay off higher-interest debt. **PENDING**

UNEMPLOYMENT BENEFITS: The federal enhanced unemployment benefit program has now ended. The program has been criticized for contributing to the tight labor market; however, the current available data shows that it had only a marginal impact. There is no indication, at this moment, that the Biden Administration or Congress intends to restart the program. **CONCLUDED**

FEDERAL RELIEF: The National Restaurant Association (NRA) is making a renewed push for relief funds, releasing new data showing that the Delta variant has had a dramatic, negative impact on customer traffic. A NRA survey finds that 6 in 10 adults changed their restaurant use due to the rise in the delta variant, 19 percent of adults have stopped going out to restaurants and 9 percent have cancelled existing plans to go out to a restaurant in recent weeks. **PENDING**

CALIFORNIA: The state labor commissioner fined three El Super grocery stores in Southern California for failing to provide or for delaying supplemental paid sick leave or other benefits to 95 workers impacted by COVID-19. According to the findings, some of the workers were forced to work while sick, others were told to apply for unemployment while quarantining or in isolation, while others waited months to be paid. The agency opened an investigation after receiving complaints from workers and a referral from the United Food and Commercial Workers International Union (UFCW). **RESOLVED**

BOJANGLES: The company says it will close all of its company-owned establishments for one additional day portraying it as a chance to provide its thousands of employees a “well-deserved break.” In a statement, the chain encouraged its thousands of employees to use the upcoming closure on Sept. 13 for an opportunity to “rest and recharge.” Employees will not get paid for the day off. The company did the same thing on Aug. 30. **PENDING**

COVID-19 CONT.

OPENTABLE & YELP: Both reservation and restaurant rating platforms have added components to their platforms so restaurants can now display their COVID-19 vaccine requirements for consumers to know what to expect when making reservations. This is part of Open Table's existing "Safety Precautions" feature, where restaurants can communicate what steps they are taking to ensure diners' safety throughout the pandemic. **PENDING**

U.S. CHAMBER OF COMMERCE: The U.S. Chamber of Commerce announced a vaccine requirement for all employees and visitors to its office this week. This does not constitute a policy endorsement but it is indicative of the organization's positioning on the issue of vaccine mandates and so-called vaccine passports. **ISSUED**

TREASURY DEPARTMENT: The Internal Revenue Service issued guidance regarding the treatment of tips as qualified wages for purposes of claiming the Employee Retention Tax Credit (ERTC). Under the new guidelines, businesses can claim tips paid by customers in excess of \$20/month as eligible wages for claiming the credit and that businesses can simultaneously claim both the 45B tax credit and the ERTC for the same wages. For the 2021 tax year, eligible businesses can access 70 percent of up to \$10,000 in wages or \$7,000 per calendar quarter. **ISSUED**

NEBRASKA: Raise the Wage Nebraska, a coalition of advocacy groups and elected state legislators, announced a new 2022 ballot initiative to raise Nebraska's minimum wage to \$15/hr. The current wage rate is \$9/hr. Voters approved it via the 2014 ballot. Since then, numerous legislative efforts to raise the minimum wage failed to advance, including a bill this year to raise the wage to \$20/hr by 2032. **PENDING**

NEW HAMPSHIRE: The governor signed legislation freezing the cash wage for tipped employees at its current \$3.27/hr. The state's wage rate is tied to the federal minimum wage; however, it did allow for a tip credit of 55 percent. This new law essentially preempts any potential increase in the server wage. **ENACTED**

NEW YORK: One Fair Wage president Saru Jayaraman is calling on the newly-appointed governor, Kathy Hochul, to eliminate the tip credit in the state and pay servers at least the state minimum of \$15/hr. In her comments, she likened the sexual harassment charges against former Gov. Cuomo with the plight of restaurant workers saying that sexual harassment is inherent in tipped work. **ANNOUNCED**

LONG BEACH, CA: A federal judge dismissed a lawsuit brought by the California Grocers Association challenging the city's hazard pay ordinance. In Jan. the city council voted to require grocery employers to pay frontline workers an extra \$4/hr for 120 days. The lawsuit contended that the city's ordinance interfered with collective bargaining between grocers and unions and was preempted by the National Labor Relations Act, and by applying the requirement only to larger grocery stores, the city had violated the Equal Protection Clauses of the U.S. and California constitutions. The judge found that the ordinance was merely a labor standard and did not "regulate the mechanics" of collective bargaining, such as a minimum wage law, and thus was not preempted. **RESOLVED**

MEMPHIS, TN: The city council held a hearing on a proposal to tie city incentives to businesses to the minimum wage of the companies receiving those benefits. The proposal would mandate that businesses receiving tax incentives to locate or expand in the city pay a minimum wage of \$21/hr. **PENDING**

AMAZON: The company announced that it will cover the cost of tuition and books for employees pursuing bachelor's degrees at various universities nationwide. Hourly employees will be eligible for the new benefit after 90 days on the job. Employees working as little as 20 hours a week will be eligible for the benefit. Amazon will pay 50 percent of college costs for part-time staffers under the program. **PENDING**

WAGES

WAGES CONT.

CORPORATE ACTION: Numerous large entry-level employers announced wage hikes. PNC Bank will raise its starting minimum wage to \$18/hr, Walgreens to \$15/hr, Walmart to \$12/hr, Lululemon to \$15/hr, and Aldi to \$15/hr. **PENDING**

U.S. HOUSE: Democrats unveiled a major component of their pending \$3.5 trillion infrastructure plan this week, 12 weeks of universal paid family and medical leave. The benefit would become available in 2023. It would be distributed on a sliding scale with lower-earning workers having the largest portion of their pay replaced while on leave. The benefit would be paid out monthly. **PENDING**

MAINE: The governor signed legislation creating a commission tasked with devising a family and medical leave program for the state. The commission will spend time collecting feedback from stakeholders (workers, caregivers, employers, and others) before designing the state's program. **ENACTED**

OREGON: The state labor department issued a temporary rule that expands the reasons employees can use leave under the state's paid sick and safe leave law during a public health emergency. Eligible employees may now take covered leave for among other things, if the air quality index or heat index is at a level where continued exposure to such levels would jeopardize the employee's health. **ENACTED**

PAID LEAVE

PITTSBURGH, PA: The city council extended its COVID-19 paid sick leave policy for another year. It grants 80 hours of paid sick leave to employees who catch the virus, if they worked an average of at least 40 hours per week for an employer with at least 50 workers. It also guarantees time for employees who need to care for a family member with COVID-19, or if an employee has been exposed to the virus and needs to quarantine. **ENACTED**

SEATTLE, WA: The city's Office of Labor Standards announced that Postmates agreed to pay more than 1,500 Seattle gig workers almost a million dollars over the company's violations of the city's Paid Sick and Safe Time Ordinance (PSST). The agreement will resolve claims by employees that Uber subsidiary Postmates failed to inform workers of the company's PSST options and did not notify individuals about their accrued PSST balances. **RESOLVED**

TYSON FOODS: The company is offering its frontline workers paid sick leave for the first time. The new benefit is part of a larger agreement that earned union support and included a vaccine mandate for all U.S. employees. 90,000 - or 75 percent - of its 120,000 U.S. workers have now been vaccinated, up from 50 percent when it announced the mandate on Aug. 3. Workers have until Nov. 1 to get vaccinated. Under the agreement with the UFCW, Tyson workers can earn up to 20 hours of paid sick leave. **PENDING**

LABOR POLICY

NLRB: National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo has instructed the board's regional offices to do everything in their power when punishing employers for unfair labor practices. This action aligns with Congressional Democrats' efforts to include enhanced penalties (provisions of the PRO Act) in the infrastructure package that is currently being crafted. **PENDING**

LABOR POLICY CONT.

U.S. SENATE: The Committee on Health, Education, Labor & Pensions (HELP) failed to advance the nomination of David Weil to head the Labor Department's Wage & Hour Administration. Weil served in the same role - the nation's chief enforcer of federal minimum wage and overtime pay laws - from 2014-2017. The committee deadlocked on an 11-11 vote and the status of the nomination is unclear as the Democratic leadership could still procedurally choose to take the nomination to the Senate floor through a discharge petition. **PENDING**

PRO ACT: A U.S. Conference of Mayors (USCM) committee weighed in on the controversial labor legislation that is pending in Congress, throwing their support behind the union-backed bill. Members of the conference met virtually via Zoom this week after canceling their in-person gathering in Austin, Texas due to COVID-19. The committee adopted a measure stating that the USCM "supports the Protecting the Right to Organize (PRO) Act and other federal legislation to protect public employee collective bargaining." Additionally, California Attorney General Bonta led a group of 16 other AGs calling on the U.S. Senate to pass the controversial legislation. In their comments, the group - all Democrats - argued that the PRO Act "strengthens and modernizes the National Labor Relations Act (NLRA), which enshrines the fundamental rights to organize, unionize, and bargain collectively." **PENDING**

CALIFORNIA: A Superior Court judge ruled the state's Proposition 22 ballot initiative passed by voters in 2020 is unconstitutional and thereby invalid. The measure was forwarded by rideshare companies in an effort to exempt their drivers from the state's AB-5 law which reclassified their workers as "employees" and not as independent contractors. The judge determined that language in the initiative mandating a 7/8th threshold requirement for the California legislature to amend the law was unconstitutional because it "limits the power of a future legislature to define app-based drivers as workers subject to workers' compensation law." **RESOLVED**

WISCONSIN: Legislation was heard this week that would expressly classify gig economy workers, like Uber and Lyft drivers, as independent contractors, preventing them from receiving workers compensation and other employee benefits. The proposed measure, AB-487, would also allow platform companies to provide benefits to their drivers without classifying them as employees. The legislation, in effect, would allow those employers to establish a benefits regime that resembles a traditional employment relationship. **PENDING**

WEST HOLLYWOOD, CA: The city is the latest to consider a targeted Universal Basic Income (UBI) pilot program. The specifics are still being finalized, but for now, the city plans to give monthly unconditional \$1,000 payments to at least 25 LGBT senior citizens. The pilot is slated to last 18 months, and will likely begin by the end of this year or until the city can identify a private funding partner. **PENDING**

HOBBY LOBBY: A state court upheld a lower court ruling that Hobby Lobby violated Illinois anti-discrimination law by denying a transgender employee access to the women's restroom. Experts say the case could have nationwide implications. Hobby Lobby could appeal the ruling to the Illinois Supreme Court and potentially, all the way to the U.S. Supreme Court. **PENDING**

AFL-CIO: The nation's largest union met to fill the remaining term of Richard Trumka, the organization's president who passed away unexpectedly last month. In 2022, a permanent successor will be elected. Current Secretary-Treasurer Liz Shuler, Trumka's closest ally, was selected as the first woman to ever head the union. **RESOLVED**

LABOR ACTIVISM

GALLUP POLL: On Labor Day, the Gallup organization released its annual poll on Americans' attitudes toward labor unions. According to the findings, 68 percent of Americans approve of labor unions, the highest since 1965 when approval stood at 71 percent. Americans' approval of labor unions has been trending upward in recent years and is now at its highest point in more than half a century. Approval among Democrats, which is nearly unanimous, has risen over the past year as President Joe Biden has said he expects his administration to be one of the most pro-union in history. Also of note, former President Donald Trump adopted many traditional union issues, as have other Republicans recently. **RELEASED**

COLECTIVO COFFEE: Workers at Colectivo Coffee voted to unionize this week, affiliating with the International Brotherhood of Electrical Workers (IBEW). The unit of nearly 500 employees will include cafes in Milwaukee, Madison, and Chicago, as well as a roasting facility in Milwaukee. Labor leaders are claiming it's the largest unionized coffee chain in the country. A number of successful unionization campaigns have been conducted at independent coffee shops and brewpubs in the Great Lakes area over the past year. Often workers' primary concerns are related to COVID-19, health and safety concerns as well as job security. **PENDING**

RESTAURANT OPPORTUNITIES CENTER: The Restaurant Opportunities Center (ROC) held a press conference to release the results of its report on the State of the Restaurant Worker in 2020. Among many of the "findings", the report asserts that restaurant workers are more than twice as likely to be in poverty compared to the general population. **RELEASED**

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